

Approved 4-11-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ~~x.m.~~/p.m. on February 25, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Macy, Douville, Sebelius and Vancrum who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Walters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Representative Stevi Stephens
John Polson, Private citizen
Shaun McGrath, representing Kansas Natural Resource Council
Elwaine Pomeroy, Kansas Collectors Assoc. Inc.
Stan Lind, Counsel for the Kansas Association of Financial Services
Onan Burnett, representing U.S.D # 501
Joe Zema, School Board Attorney
Jack Lacey, representing Kansas Department of Wildlife and Parks
Gerald W. Henderson, Executive Director, United School Administrators of Kansas
Norman D. Wilks, Director of Labor Relations, Kansas Association of School Boards
Helen Stephens, representing Kansas Peace Officers Association
Paul Shelby, Office of Judicial Administration
Cathy Leonhart, Legislative Chairperson, Kansas Association of Court Services Officers

The Chairman called the meeting to order and asked for bill requests.

Representative Stevi Stephens requested a committee bill regarding temporary restraining orders, amending K.S.A. 60-905.

Representative Garner made a motion that the proposed legislation be introduced. Representative Smith seconded the motion. The motion carried.

John Polson, a private citizen, requested a bill regarding non-custodial parents' rights concerning written correspondence to the minor child.

Representative Everhart made a motion that the proposed legislation be introduced. Representative Carmody seconded the motion. The motion carried.

Representative Garner requested a bill which would amend K.S.A. 8-288, concerning habitual violators and their right to regain their right to operate a motor vehicle.

Representative Garner made a motion that the proposed legislation be introduced. Representative Everhart seconded the motion. The motion carried.

Representative Everhart requested a bill which would require the same type of battery offense against an officer at YCAT as for an officer under the Department of Corrections.

The Chairman asked Representative Everhart if her proposed change could be amended into an existing bill by the Judiciary Committee. Representative Everhart agreed to submit her proposal as an amendment.

Shaun McGrath, representing the Kansas Natural Resource Council, requested a bill requiring a deposit on beverage containers. (See Attachment # 1).

Representative Smith made a motion to introduce the proposed legislation. Representative Garner seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 ~~xxx~~ a.m./p.m. on February 25, 1991

Representative Solbach asked for consideration of a bill which the Press of Kansas, The Society of Professional Journalists, has requested repealing one of the laws dealing with open records.

Representative Everhart made a motion to introduce the proposed legislation. Representative Rock seconded the motion. The motion carried.

The Chairman called for continuation of hearing on HB 2380, allowance of attorney fees in actions to recover on certain accounts, instruments and contracts.

Elwaine Pomeroy, representing the Kansas Collectors Association, Inc., appeared to express concerns regarding HB 2380. Mr. Pomeroy distributed cover sheet setting out two areas of concern attached to letter, dated February 25, 1991, by Peter Huston on behalf of Kansas Collectors Association (Attachment # 2 and # 3).

Committee questions followed.

Stan Lind, Counsel for the Kansas Association of Financial Services, submitted written testimony, including information on the 13 states omitted from his February 21, 1991, attachment. (See Attachment # 4).

There being no further conferees, the hearing on HB 2380 was closed.

Representative Smith referred to the bill request deadline and noted that a bill should be introduced regarding the historical significance of the Old Supreme Court Room, although the sub-committee report on the subject has not been completed.

Representative Smith made a motion that the proposed legislation be introduced. Representative Rock seconded the motion. The motion carried.

The Chairman called for hearing on HB 2365, prohibiting possession of a firearm on school grounds.

Onan Burnett, representing U.S.D #501, appeared in support of HB 2365, prohibiting possession of a firearm on school grounds.

Mr. Burnett introduced Mr. Joe Zema, School Board Attorney, who said he patterned his bill after the drug-free school zone bill passed last session; that firearms are prohibited on grounds where there is a building, where there is teaching, or where extra-curricular activities are going on; if all school property were to be covered, it would need amendment.

Committee questions followed.

Jack Lacy, representing Kansas Department of Wildlife and Parks, appeared to express concern about HB 2365. (See Attachment # 5).

Committee questions followed.

Gerald W. Henderson, Executive Director, United School Administrators of Kansas, appeared in support of HB 2365. (See Attachment # 6).

Committee questions followed.

Norman D. Wilks, Director of Labor Relations Kansas Association of School Boards, provided written testimony in support of HB 2365. (See Attachment # 7).

Helen Stephens, representing the Kansas Peace Officers Association, appeared as a proponent of the bill will concerns. (See Attachment # 8).

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~am~~/p.m. on February 25, 1991.

Committee questions followed.

There being no further conferees, the hearing on HB 2365 was closed.

The Chairman called for hearing on HB 2101, notifying grandparents in child of need of care statutes.

Paul Shelby, Office of Judicial Administration, appeared in support of HB 2101 (See Attachment # 9).

Committee questions followed.

Cathy Leonhart, Legislative Chairperson, Kansas Association of Court Services Officers, appeared in support of HB 2101. (See Attachment # 10).

Committee questions followed.

There being no further conferees, the hearing on HB 2101 was closed.

The Chairman asked if anyone present or on the committee wished to introduce any additional bills. No further requests were made.

The meeting adjourned at 4:20 P.M. The next scheduled meeting is February 26, 1991, at 3:30 P.M. in room 313-S.

BEVERAGE CONTAINER DEPOSIT BILL

Goal: The goal of the bill is to reduce litter, to reduce wastes currently being landfilled, and to increase reuse and recycling and thus to conserve resources.

Objective: The objective of the bill is to impose a five cent deposit on beverage containers giving consumers an incentive to return their empty beverage containers for recycling or reuse.

Beverage Containers: The bill applies to beverage containers for beer, liquor, pre-mixed mixed drinks, wine coolers, and carbonated beverages. Containers of less than one gallon made of a metal, plastic or glass are effected by the bill.

Refillable Glass: A provision of the bill directs the Secretary of Health and Environment to encourage the use of refillable glass containers by certifying different classes of standardized glass containers which are refillable.

Redemption Centers: Under the bill, persons may create redemption centers to accept containers for redemption. Additionally, retail stores may sponsor redemption centers in their vicinity, which relieves the retail store from having to accept containers.

Handling Fees: A two cent per container handling fee must be paid by distributors or manufacturers of beverages to the retailers and redemption centers which have redeemed the deposits on containers from consumers.

Vending Machines: Operators of vending machines are exempt from paying redemptions, but must post on the vending machines the redemption value of the containers and where the redemption may be collected by the consumer.

Redemption Goals: After two years, the recycling coordinator will determine the rate of return of the containers effected by the bill, and if the return is less than 60%, the deposit will increase from five cents to ten cents per container.

Exceptions: Excessively dirty containers do not have to be accepted for redemption. Retailers and redemption centers can also limit the number of containers accepted per consumer per day to \$25.

Adjacent States: Containers sold in adjacent states must differ from those specified for sell in Kansas, in order to protect against having to pay a redemption on containers for which no deposit was paid.

Solid Waste Management Fund: Nonrefunded deposits will be collected by the state and go into the Solid Waste Management Fund. The fund will be used to pay for programs to reduce litter, to increase recycling, to promote development of recycling markets, to reduce solid wastes, and for other solid waste management projects and programs.

Landfilling Prohibited: Retailers, redemption centers, distributors and manufacturers are prohibited from disposing of beverage containers in sanitary landfills.

Penalties: There is \$50 penalty for not complying with the redemption sections of the bill. The penalty is \$100 for second offenses and \$250 for third offenses.

Manufacturers and distributors who do not report their overredemption/underredemption will be assessed a civil penalty of \$1000, or \$5000 if the report is falsified. Second offenses are \$5000 and \$10,000 respectively.

HTJUD
Attachment #1
2-25-91

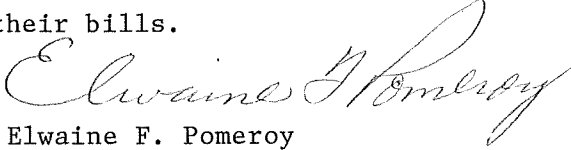
February 25, 1991

House Judiciary Committee:

Thank you for permitting me to submit additional comments on behalf of Kansas Collectors Association, Inc., concerning House Bill 2380. Attached to my comments today is a statement from Peter Huston, of the Kansas Collectors Association, Inc. We have two areas of concern:

- A. Kansas Collectors Association has concerns that this legislation would encourage unfair competition, because it would permit the assessment of attorney fees in those instances where civil actions were instituted to collect debts. This would mean that services rendered by collection agencies to collect accounts without filing law suits would be at a competitive disadvantage. Collection agencies try to work with debtors to work out arrangements to repay debts without filing law suits.
- B. The Kansas Collectors Association is also concerned that this legislation would encourage the filing of lawsuits in order to obtain the benefit of collecting from the debtor the attorneys fees involved in the collection process. Even if an account had been referred to an attorney for collection, would not that attorney feel obligated to the client to file a lawsuit in order that the attorney fees would be assessed against the debtor, rather than the attorney's client paying the legal fees?

The issue of unfair competition could be addressed by striking "attorney" on line 19 and substituting "collection" in its place, but that would still encourage the filing of litigation in order to assess those costs against the debtor. Keep in mind also that the debtors against whom these costs would be assessed are persons who are already having difficulties paying their bills.


Elwaine F. Pomeroy
Kansas Collectors Association, Inc.

HJUD
Attachment # 2
2-25-91

February 25, 1991

House Judiciary Committee:

Kansas Collectors Association would like to express our concerns regarding House Bill No. 2380.

HB 2380 would allow attorneys to collect "reasonable attorney fees" on virtually all type of accounts that go through civil action.

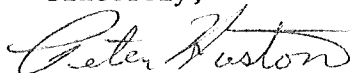
Our concerns are for the debtors who are already faced with hardship of being able to pay these accounts. Passage of HB 2380 would encourage credit grantors to direct their attorneys to automatically file suit against the debtor so attorney fees could be added. Passage of this bill would cause a large increase in suits being filed through your county court house. This would place an extra work load on your local county court system, not to mention the severe blemish that these added suits would leave on an individual's credit history.

We feel before this action is taken the debtor must first be given an opportunity to work out arrangements to repay the indebtedness.

In closing, the Kansas Collectors Association hopes that this committee will scrutinize this bill before it alters a law that has been on the books for 115 years.

Kansas Collectors Association thanks you for your hard work and dedication you give the people in our great state of Kansas.

Sincerely,



Peter Huston on behalf of
Kansas Collectors Association

HJUD
Attachment #3
2-25-91

H.B. 2380

Statement Before the House Judiciary Committee
on February 21, 1991
by Stanley L. Lind, Counsel for the
Kansas Association of Financial Services

Madam Chairperson - Members of the Committee. I am Stanley L. Lind, Counsel & Secretary for the Kansas Association of Financial Services, the state trade association of consumer finance companies in Kansas. I appear here in support of H.B. 2380.

Kansas and 47 other states supposedly follow the American Rule in not permitting the award of attorney fees to the prevailing party in law suit, while only Alaska follows the English Rule - which permits reasonable attorney fees to be awarded to the prevailing party in any suit.

Notwithstanding the fact that 48 states follow the American Rule, a monograph on this subject states that there are approximately 2200 statutory exceptions to the American Rule today -and- that by the year 2000, it is anticipated that there will be approximately 3000 such exceptions. Surely this illustrates that old expression that the rule is more honored in its recitation than by its observance.

In the 1990 Legislative Session, there was a bill pertaining to worthless checks, which was numbered H.B. 2581. When this bill was on General Orders, a motion was made to amend H.B. 2581 to permit attorney fees to the prevailing party on suits, on notes, accounts, etc. The wording of this motion was almost identical to the present H.B. 2380.

After a debate on the motion which exceeded an hour, the motion was adopted. On 3rd Reading, the 1990 House passed H.B. 2581 on a vote of 95 to 24; present but not voting - 3; absent - 3.

The Senate Committee considering H.B. 2581 in the 1990 Session, deleted the House Amendment on the basis that the bill contained two subjects - and therefore would be unconstitutional.

This year, we requested that H.B. 2380 be introduced using the same language found in the 1990 House amendment to H.B. 2581, except for the following additions:

- a) "revolving account" - line 14
- b) "contract for line of credit" - line 15

While these two items are thought to fall within the scope of the verbiage otherwise used, we added these because of their prevalence in the credit world and to remove any doubt as to whether they were included.

HJUD
Attachment #4
2-25-91

In order to show the committee what other states are doing on this subject, I asked one of our member companies to furnish me with a list of the states in which they operate -and- the rules as to whether attorney fees are permitted on suits, on notes, accounts, etc.

If the Committee will refer to the six page exhibit that has been distributed, you will find 37 states listed. Of the 37 states listed:

- * Only six of the states prohibit attorney fees
- * One state is silent
- * 30 states permit attorney fees to be recovered under varying circumstances on suits on notes, accounts, etc.

Because of the time constraint, I did not have time to obtain this information as to the other 13 states, which information I will furnish the Committee on February 25.

In conclusion - we think that the concept contained in H.B. 2380 is one whose time has come -and- we submit that last year's House vote of 95 to 24 on H.B. 2581 is indicative of that.

We ask that the committee recommend H.B. 2380 for passage.

Attachment to the Statement
of Stanley L. Lind,
to the House Judiciary Committee
on February 22, 1991 by
Stanley L. Lind, Counsel,
Representing the
Kansas Association of Financial Services

At the hearing on February 22, 1991, an exhibit was distributed stating that out of the 37 states enumerated, that 30 permitted attorney fees to be awarded to the prevailing party on suits, on notes, accounts, etc., under the provisions of various statutes. That six states did not so permit and one state had no policy.

Because of the time element involved in calling the committee hearing, it was stated that the information on the remaining 13 states would be furnished to the committee on February 25, 1991. The information as to whether attorney fees may be awarded to the prevailing party in the remaining 13 states is set-out below:

Alaska	:	Attorney fees may be awarded by Court Act 800 of 1989.
Hawaii	:	Attorney fees clauses are enforceable to maximum of 25% of unpaid principal as are collection agencies.
Idaho	:	If contracted for, a judgment for attorney fees is permitted.
Iowa	:	Attorney fee clauses are enforceable with fee to be determined by Court.
Louisiana	:	Attorney fee clauses enforceable but limited to 25% on consumer credit.
Maine	:	No provision.
Mississippi	:	Attorney fees are permitted.
Montana	:	Attorney fee clauses enforceable
N. Dakota	:	Not permitted.
S. Dakota	:	Not permitted
Utah	:	Attorney fee clauses are enforceable.
Vermont	:	Attorney fee clauses enforceable.

A summarization of the 50 states as to their rule on permitting attorney fees to the prevailing party -is- as follows:

a)	Attorney fees permitted:	40 states
b)	Not permitted	: 9 states
c)	No policy	: 1 state

4-3

H.B. 2365

Testimony Presented to: House Judiciary Committee
Provided by: Kansas Department of Wildlife and Parks
February 25, 1991

This bill would restrict possession of a firearm on any school property except by a law enforcement officer. It would apply to kindergarten through 12th grade school levels.

This Department administers a state mandated Hunter Education program through agency employees and a network of volunteer hunter education instructors that are accredited by the Department. Some course work for hunter education students takes place as a school function. School facilities are also used by many instructors for conducting hunter education classes. During the course work, firearms are present as an instructional tool. These firearms are never loaded and some have been rendered inoperable.

The provisions of this bill as currently written would prohibit our continued use of school facilities for a state approved educational program. The Department suggests an amendment which would allow possession of firearms when used in conjunction with a hunter education course by persons conducting the course.

Thank you for the opportunity to speak to this committee and for your consideration of our concern.

Testimony of Jack Lacey
HJUD
Attachment # 5
2-25-91



HB 2365

February 25, 1991

Testimony presented before the House Judiciary Committee
by Gerald W. Henderson, Executive Director
United School Administrators of Kansas

Mister Chairman and members of the committee. United School Administrators of Kansas is in complete support of **HB 2365** for obvious reasons. Not even during the volatile years of the sixties were school administrators worried about people coming to school and solving problems with guns. Now many of them are.

I can well remember as a teacher in southwest Kansas when I was confronted with a man with a loaded gun. It was a frightening experience to say the least. That person harmed no one, but he well might have. As I recall it, there were never any specific charges filed. It may well have been that the law enforcement people needed the provisions of this bill.

We encourage you to recommend **HB 2365** favorably for passage.

HB2365/gwh

HJUD
Attachment # 6
2-25-91

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

Testimony on H.B. 2365
before the
House Committee on Judiciary

by

NORMAN D. WILKS, DIRECTOR OF LABOR RELATIONS
Kansas Association of School Boards

February 25, 1991

Mr. Chairman and Members of the Committee, on behalf of the 292 of 304 Unified School Boards of Education, which are members of the Kansas Association of School Boards, we wish to express our support for the passage of H.B. 2365.

We believe it is inappropriate for persons other than law enforcement officers to possess firearms on school property. We therefore, support the expansion of the definition of unlawful possession of a firearm to include possession on public school property.

We urge your favorable consideration of H.B. 2365.

HJUD
Attachment # 7
2-25-91

BILL [redacted], President
Chief of Police
Arkansas City, Kansas 67005

ED PA [redacted], President-Elect
Ks. Law Enforcement Training Cen.
Hutchinson, Kansas 67504

CLIFF HACKER, Vice-President
Lyon County Sheriff
Emporia, Kansas 66801

ALVIN THIMMESCH, Secretary-Treasurer
Kansas Peace Officers' Assn.
Wichita, Kansas 67201

Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-722-7030

FAX 316-729-0655

P.O. BOX 2592 • WICHITA, KANSAS 67201



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(At Large)

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Topeka, KS 66604
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Chief of Police
Derby, KS 67037
KENNETH McGLASSON
Kansas Highway Patrol
Wakeeney, KS 67672
BOB ODELL
Cowley County Sheriff
Winfield, KS 67156

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Johnson Co. Sheriff's Office
Olathe, KS 66202
DAVE SMAIL
Paola Police Dept.
Paola, KS 66071
JERRY R. WOLFSKILL
Johnson County Police Academy
Overland Park, KS 66210

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Salina Police Dept.
Salina, KS 67401
CARL McDONALD
Dickinson Co. Sheriff's Office
Abilene, KS 67410
NATE SPARKS
Kansas Highway Patrol
Junction City, KS 66441

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Hays, KS 67601
JOHN FROSS
Ft. Hays St. Univ. Police
Hays, KS 67601
FRANK REESE
Ellis Co. Sheriff's Office
Hays, KS 67601

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Chief of Police
Coffeyville, KS 67337
LOWELL PARKER
Greenwood Co. Sheriff
Bureka, KS 67045
TINY WILNERD
Ks. Dept. Wildlife & Parks
Howard, KS 67349

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Newton, KS 67114
JIM DAILY
Barton Co. Sheriff's Office
Great Bend, KS 67530
DICK BURCH
Ks. Law Enforcement Training Cen.
Hutchinson, KS 67504

DISTRICT 6

KENT NEWPORT
Holcomb Police Dept.
Holcomb, KS 67851
MARVIN CAIN
Santa Fe R.R. Police
Dodge City, KS 67801
RAY MORGAN
Kearny Co. Sheriff's Office
Lakin, KS 67860

DISTRICT 7

CHARLES RUMMERY
Wichita Police Dept.
Wichita, KS 67202
JOHN DAILY
Sedgwick Co. Sheriff's Office
Wichita, KS 67203
LARRY WELCH
Ks. Law Enforcement Training Cen.
Hutchinson, KS 67504

DISTRICT 8

DANA KYLE
Riley County Police Dept.
Manhattan, KS 66502
RANDALL THOMAS
Lyon Co. Sheriff's Office
Emporia, KS 66801
DOUGLAS PECK
Kansas Highway Patrol
Emporia, KS 66801
SERGEANT-AT-ARMS
LARRY MAHAN
Kansas Highway Patrol
Wichita, KS 67212

February 25, 1991
House Bill No. 2365

Mr. Chairman and Members of the Committee:

My name is Helen Stephens, representing the 3,000 members of the Kansas Peace Officers Association.

KPOA strongly supports the intent and concepts put forth in HB 2365. In some schools across the state, firearms in the schools have presented some terrifying situations.

Although we strongly support this bill, we do have concerns about its enforcement.

What is the definition of possession. Would this include firearms in a vehicle? On a gunrack? Or does the firearm need to be on the person? Also, we assume this would apply to students and adults; including those who attend football or baseball games, board meetings, or visits to the local school.

Unless clarified and narrowed, KPOA believes #2365, although needed legislation, would be difficult to enforce.

Thank you for the opportunity to speak to you today.

HJUD
Attachment #8
2-25-91

In Unity There Is Strength

House Bill No. 2101
House Judiciary Committee
February 25, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss House Bill No. 2101 concerning grandparent notification in children in need of care cases.

This is a proposal from the Kansas Association of Court Services Officers and supported by our office.

This is a proposal to amend K.S.A. 38-1562 (b) and K.S.A. 38-1564 (b) to change the requirement of restricted mail to certified mail on the Notice of Hearing on Page 1, line 25. This amendment permits a savings of \$2.00 per notice in which grandparents must be notified. This savings will accrue to county general funds which pay the postage for these notices.

On page 1, lines 28-29 amendment would require the notice to the grandparents to advise them on how they can become interested parties under K.S.A. 38-1541 (determination of interested party). We feel this amendment provides excellent notice and ample opportunity for involvement if they are interested in the case, and if not interested, this deletes unwarranted burdens to the grandparents and the court system in general.

Other savings in court service officer and clerical time and the additional cost of forms cannot be reliably estimated, in that our office has no accurate figures on how many children in need of care cases will require notification of grandparents.

We urge the committee to favorably pass this proposal.

HJUD
Attachment # 9
2-25-91

KANSAS ASSOCIATION OF COURT SERVICES OFFICERS



TESTIMONY

TO: Judiciary Committee

Executive Board

FROM: Cathy Leonhart - Legislative Chairperson

President

Michael Patterson
Topeka

RE: HB 2101 - Grandparent Notification

Vice President

John Steelman
Ottawa

DATE: February 25, 1991

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Parsons

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Donna Hoener
Olathe

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Mary Kadel
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Public Relations Chairperson

Shirley West
Wichita

Immediate Past President

Karen Dunlap
Concordia

We have a great appreciation for the involvement of grandparents in Child in Need of Care cases. If a grandparent is interested in custody, the suggested amendments continue to provide notice and ample opportunity for their involvement. On the other hand, if a grandparent shows no response or is otherwise excluded, additional notices would not appear to be needed and actually pose unwarranted burdens on the System and to the grandparents. We have no concern with the initial notification of grandparents during adjudication and disposition of Child in Need of Care actions.

However, the Court is currently required to again notify grandparents after termination of parental rights has occurred. I would like to cite a number of examples that are recurring problems. Court Services Officers, Clerks, Judges get calls from nursing homes indicating that their residents are actually very traumatized by repeated notices. It causes them great concern and confusion and there is really nothing they can do. We have cases in which the grandparents are not U.S. citizens and are unavailable for custody yet, by law, they must be notified. If an individual was party to the abuse and excluded by the Court for possible custody for good cause, notification is unreasonable.

Situations such as this are more common than you might think. Repeat notifications are not a burden on the System when a Court only deals with a few Child in Need of Care cases each year. In urban Courts, however, this extra set of notices involves hundreds of cases annually. This presents a significant burden on clerks and also substantial cost for these hundreds of "restricted mailings" each year. Changing this requirement to "certified" mailing will alleviate some cost and still

TESTIMONY

Page 2

provide sufficient notice.

We feel that by amending 38-1562 (b) grandparents will be better advised regarding 38-1541 which explains the opportunity for "special status" as an interested party. This would provide for continued notification of those who wish to be involved and eliminate unnecessary repeat notifications.